Scott. M-46—33,702—27-11-23.

Public. (1925) Department.

Letter ~~SERIES.~~

G.O. No. 66

DATED 20-1-25

[Despatch Abstract.]

[illegible] property- Socialization in South [illegible]- recovery [illegible] to [illegible]-

The Mission Trust of Southern India

Tiruvallur, Chingleput Dt.,
5th December,

CURRENT No.
1090

From

The Rev. T.E.J. Hooper, M.A.,
Chairman, The Mission Trust of Southern India,
Tiruvallur,

To

The Chief Secretary to Government of India,
Madras,

CHIEF SECRETARY
7 - DEC. 1924
CHIEF SECRETARIAT

Sir,

Rice Fields at Merkal.

I have the honour to inform you that the Mission Trust of Southern India in its meeting of December the 3rd 1924 resolved to recommend to Government that sanction be given to reconvey certain property to the family of the man who sold it to the Basel Mission a number of years ago. Legal opinion has been taken in the matter to the effect that they would be entitled to get back the property on paying the amount due. The property in question is S.No.161/1-8 on page 100-101 of the Schedule of Immovable properties in the Chingleput District. I have the honour

S. Kanaka

P.T.O.

(V)

3/ Pub Dept

Letter No 520 dt 8.12.24
To the Rev. J. S. M. Hooper, M.A.
Chairman Mission Trust of Southern India
Doravarillur, Chingleput

Sir

Basel Mission — Immovable property in Kaniara — Reconveyance of certain items to mortgagors — your letter 8-10-5-20

I am directed to request that you will be so good as to forward to Govt for perusal and return the mortgage deed D. 17.6.03 under which the property in question came into the possession of the Basel mission and also the legal opinion taken by the Mission Trust in the matter of the reconveyance of the property to the family of the original mortgagor.

I have etc

2/ The terms on which the property is proposed to be redeemed may also be intimated

Dy No 4.1.26

LK 16.12.26

20/12/26

17/12/26

Pub Dept 2663/12

18.12.26

P.C. 6

18/12/26

Order as in draft

Items 1 to 8 as proposed (V)

P.C. 6

4

The Mission Trust of Southern India.

Tiruvallur, Chingleput Dt.,
2nd January, 1925.

DEPUTY SECRETARY
4 - JAN 1925
SECRETARIAT

CURRENT NO.
0037
PUBLIC

From

The Rev. J.S.M. Hooper, M.A.,
Chairman, The Mission Trust of Southern India,
Tiruvallur,

To

The Deputy Secretary
To The Government of Madras,
Fort St.George, M a d r a s,

Sir,

p 3 ante

Re. your letter No.10520-1 dated 17-12-24 with regard to the proposed reconveyance of certain items of immovable property in South Kanara to the mortgagors, I have the honour to forward herewith for favour of perusal and return the mortgage deed in question together with a copy of the legal opinion taken by the Mission Trust. Mr.Fritschi, the Treasurer of the Kanarese Evangelical Mission in charge of the property, writes:-

+ placed below

p 6 ante

"The value of the property has considerably risen during the time it was enjoyed by the Pension Fund on usufructuary mortgage. In 1919 it was valued by Government Rs.2685.(see page 100,101 of the property list).

Nos 191-198

6

at (V)

5/

The Mission Trust of Southern India.

"As we have all the years round had a considerable amount of trouble with the administration of this property enjoyed by the Pension Fund on usufructuary mortgage, I wonder, whether it would not be legal to charge the party some amount for the administration work in addition to the expenses to be incurred for the reconveyance of the property. The amount of the loan still to be repaid by the party is Rs.800/-."

I have the honour to be

Sir,

Your most obedient servant,

Chairman, M.T.S.I.

Enc:2

6

The Mission Trust of Southern India.

Legal Opinion Re Rice Fields at Karkul.

In this case one Annojee, his wife; son for themselves and on behalf of the minor sons of Annojee effected a usufructuary mortgage of the some property. The mortgage contained the clause "We shall pay the consideration amount of Rs.850 after five years and within ten years from this date X X. If we do not take back the property as stated above, you and your successors or representatives in title will enjoy the property, on out right sale right, in which case neither we, the minors nor our representatives shall have any right title or interest to the same." The mortgagors did not pay the money within the time provided. The question is whether they are entitled to redeem on payment.

The clause does not prevent the mortgagors from redeeming the property. The mortgage is an usufructuary mortgage. Under S.60 Transfer of Property Act the mortgagors have a right to redeem. Any clause to the contrary, as in this document, is called a clog on redemption and is invalid. This is decided in Kandula Venkiah vs. Dorga Pullayya 43 Madras 589(Full Bench). Even if the mortgage is regarded as an anomolous mortgage under S. 98 a recent Privy Council decision has held that a clog on equity of redemption is illegal and ineffective even in the case of anomolous mortgage.

Sec.44 A.185 (P.C.) Muhammed Shal Khan vs.Raja Sethuswamy Dayal.

I take it that the persons who want to pay the debt are the originaal mortgagors or their representatives.

My opinion is that the mortgagors are entitled to get back the property on paying the amount due.

(True Copy).

2nd Jan., 1925.

Chairman, M.T.S.I.

Pub Dept

p/cf CNO 10520 — From Chairman, M.T.S.I & S 5.12.24
Basel Mission - immovable properties in S. Kanara dis

It seems that under clause 4(2)(b)
p 139/fo 380 (R) of the deed of transfer dt 26.1.20, the Mission
15.8.19 Trust can with the approval of the Governor
General effect the proposed transaction. The
power of approval reserved to the Govr Genl
has been delegated to this Govt in India's
p 19/fo 222 (P) letter no 1625 Pub dt 21.6.20 and this Govt are
5.7.20 therefore competent to sanction the transaction
(para 2, sub para)
2/ It will be seen from the remarks
column against items 191/1 to 191/8 on
pages 100-101 of the Schedule at (V) that
according to the terms of the mortgage deed
the property in question should now be
considered as the absolute property of the
Mission. The Rev. Mr. Hooper however
p/cf states that he has taken legal opinion
in the matter and that the mortgagors
are entitled to get back the property
It is therefore for consideration whether
the opinion of the Advocate General
may be invited before proceeding further
Draft memo subd

LK
12.12.24

Mr Hooper may be asked to let Govt see
the legal opinion as well as the

deed of mortgage - etc. can nothing be done in view. The question can only mention the terms in which the mortgagor proposes to redeem

16/12/24

16/12/24

Draft letter Subd

16/12/24

17/12/24

17/12

(Letter No 10520-1 d 17.12.24) p 3

(C. 37) From the Chairman, Mission Trust of Southern India d 2.1.25.

In the circumstances now brought to notice by the Chairman, the Mission Trust, it is submitted for orders whether we may accord sanction to the re-conveyance of the mortgaged property to the owner. If so, draft letter below put up already approved is for approval. pp 4-5 ante

Sd
7.1.25

Put up Transfer Deed and Title Deeds in appeal

Sd
8/1/25

B.C.S 2577
C. 161
R 1/9/V

with reference to ~~BOS~~'s note on the previous page, a copy of the Transfer of Property Act and vol 43 I.L.R Madras are sent.

Leo.
14.1.25

E8Cy
14/1/25

It appears to be the fact that ~~it can~~ the mortgagee can recover in this case - & in any case there is no need for Govt to object if the Minister is willing to take the Rs 850 given up the property -

CS 15-1-25

14-1-25

G 17.1.25

CHIEF SECRETARIAT
15 JAN 1925
GOVT. OF MADRAS

Public Department.

LETTER. No 66 d 20.1.25
Mis.

To

The Rev. J.S.M. Hooper, M.A.,

Chairman, Mission Trust of S. India

Tiruvallur, Chingleput Dt.

Sir,

Basel Mission - immovable properties in South Kanara - reconveyance to mortgagors - Correspondence ending with your letter dated 2-1-1925.

I am directed to state that the Government have no objection to the re-conveyance to the family of the mortgagor, on payment of the amount due, the following items of property belonging to the Basel Mission in the South Kanara district. The amount should be invested in Government Securities.

Properties to be reconveyed to mortgagors.

Survey No. and Sub No. letter.	Whether ryotwari or inam.	Patta No.	Area.	Boundaries.	No.& description of buildings.
			Acres.		
191-1	Ryotwari.		0.60		One thatched storied house and two thatched outhouses.
191-4	do.		2.57	Here enter the boundaries as at pages 100-101 of flag V	
191-2	do.		2. 0		
191-7	do.		0.17		
191-8	do.		0.25		

I have etc.